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The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MICHAEL C. SCROGGIE, DAVID A. ROCHON,  
DAVID W. BANKER and WILL GARDENSWARTZ

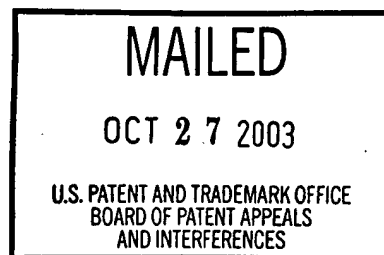
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Appeal No. 2002-0329  
Application No. 09/505,632

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ON BRIEF

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Before KRASS, JERRY SMITH and RUGGIERO, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 24-31, 34, 36-43, 46, 48 and 49.

The invention maintains a database of manufacturer offers and retailer special deals at a cooperative network site where consumers can access at least a subset of the data in the database from any manufacturer or retailer network site.

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Accordingly, it makes little difference which site, whether manufacturer or retailer, that the consumer is logged in to when initiating the request since the data is received directly from the cooperative site. The result is that manufacturer offers and retailer special deals are exposed to many more consumers.

Representative independent claim 24 is reproduced as follows:

24. A computer network implemented method, comprising the steps of:

transmitting from a consumer computer over the Internet to a Web site of a manufacturer a request for manufacturer incentives to purchase one of a product and a service offered by said manufacturer;

in response to said request for manufacturer incentives, transmitting region data from said Web site of said manufacturer over the Internet to a remote Web site;

in response to receipt of region data at said manufacturer's Web site, transmitting from said remote Web site to said Web site of said manufacturer at least one manufacturer incentive and at least one name and address of a retailer; and

transmitting from said Web site of said manufacturer over the Internet to said consumer computer said at least one manufacturer incentive and said at least one name and address.

The examiner relies on the following references:

Smolen	5,915,243	Jun. 22, 1999 (filed Aug. 29, 1996)
Sloane	5,918,211	Jun. 29, 1999 (filed May 30, 1996)

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Hoffman et al. (Hoffman)                      6,012,039                      Jan. 4, 2000  
(effectively filed Aug. 29, 1996)

Claims 28, 34, 40 and 46 stand rejected under 35 U.S.C.  
§ 102(e) as anticipated by Sloane.

Claims 24-27, 29-31, 36-39, 41-43, 48 and 49 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner cites Sloane and Hoffman with regard to claims 24, 25, 27, 29, 36, 37, 39, 41, 48 and 49, adding Smolen to this combination with regard to claims 26, 30, 31, 38, 42 and 43.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

#### OPINION

Turning, initially, to the rejection under 35 U.S.C. § 102(e), an anticipatory reference is one which describes all of the elements of the claimed invention so as to have placed a person of ordinary skill in the art in possession thereof. In re Spada, 911 F.2d 205, 15 USPQ2d 1655 (Fed. Cir. 1990).

It is the examiner's position that Sloane discloses, at column 7, lines 5-10, the transmission from a consumer computer of a request for manufacturer incentives; at column 7, lines 13-

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22, the transmission of region data from the website of a manufacturer in response to the request for manufacturer incentives; at column 7, lines 22-26, transmission from a remote website to the manufacturer website at least one manufacturer incentive and at least one name and address of a retailer in response to receipt of region data at the manufacturer's website; and, at column 7, lines 36-40, updating a manufacturer's incentive database.

The examiner also cites column 8, lines 3-7, of Sloane as part of the rationale for the rejection.

The examiner contends that it is inherent to include graphical image data corresponding to manufacturer incentives because Sloane does disclose that his communication line can be an online computer network or the Internet (column 7, lines 18-22) -See answer-page 4.

It is appellants' view that although Sloane does disclose processing incentives between a retailer, or product manufacturer, and a retailer computer/controller 12 over a communication network 200, Sloane does not disclose or suggest distributing product incentives to consumers over the internet (principal brief-page 7). Furthermore, argue appellants, "the communication sequence defined by the present invention is

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clearly a request-response transaction involving three distinct entities, namely, a consumer computer, a manufacturer website, and a remote website, using a request-response communication protocol" (reply brief-page 2).

We agree with appellants that the subject matter of independent claims 28 and 40 is not anticipated by Sloane. These claims clearly call for a transaction involving multiple separate entities, i.e., transmission from a consumer to a retailer website, transmission from the retailer website to a remote website, and transmission from the remote website to the retailer website, of a list of manufacturer incentives. Finally, the retailer website transmits to the consumer a list of these incentives.

In Sloane, there is no middle-man communication. Incentives are communicated to the consumer by either the retailer or another sender of information, e.g., the manufacturer. There is no transmission from a retailer website to a remote website in response to an inquiry from a consumer to the retailer website. The examiner identifies Figure 3b of Sloane, indicating that the sender of promotion information, 16, is indicative of a "remote website."

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The sender of promotion information 16 in Sloane is, indeed, sent from a remote site, e.g., the manufacturer. However, this information is communicated as an alternative to the retailer supplying incentive information. Moreover, this remote site 16 in Sloane, does not provide information "in response to receipt of said request at said Web site of said retailer," as required by the claims.

Accordingly, we will not sustain the rejection of claims 28 and 40 under 35 U.S.C. § 102(e).

With regard to claims 34 and 46, these claims are a bit broader in scope. They do not recite the separate communications of claims 28 and 40. In fact, claims 34 and 46 merely require a transmission from a manufacturer to a remote Web site regarding manufacturer incentive data, and then updating the manufacturer's incentives database, including graphical image data corresponding to the manufacturer's incentives.

Sloane clearly teaches, in Figure 3b, communicating manufacturer incentive data from the manufacturer to a remote Web site. The sender of promotional information, 16, may be a manufacturer (column 7, lines 11-13) and the information is sent to the consumer, at the retail computer 12, the retail computer 12 being remote from the manufacturer.

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Clearly, the information in Sloane is sent over the internet (column 7, line 22). When the manufacturer transmits this information to computer/controller 12, the information is clearly an "update" of the manufacturer's incentives database. The examiner calls this feature "inherent" and we would agree.

The only limitation of claims 34 and 46 not explicitly, or implicitly, disclosed by Sloane is "graphical image data corresponding to said manufacturers incentives." The examiner calls this a "traditional practice to present data using a graphical user interface which presents graphical image data" (answer-page 4), and holding such a disclosure in Sloane to be inherent.

Appellants' position is that Sloane does not disclose updating a manufacturers incentives database storing data defining manufacturers incentives including graphical image data corresponding to the manufacturers incentives with the manufacturer incentive data (principal brief-page 10). While it may be "traditional" to present data using a graphical user interface which presents graphical image data over the internet, "this in-and-of-itself does not teach nor suggest storing data defining manufacturers incentives including graphical image data

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corresponding to the manufacturers incentives, as in the claimed invention" (principal brief-page 10).

Since appellants do not deny that it is "traditional" to present data using a graphical user interface which presents graphical image data over the internet and Sloane clearly discloses storage of data defining manufacturers incentives by updating such information in a remote site via the internet, we will sustain the examiner's rejection under 35 U.S.C. § 102(e) since the consumer using the retailer computer/controller will be using a graphical user interface (GUI) to interface with the incentives information stored therein.

While we have sustained the rejection of claims 34 and 46 under 35 U.S.C. § 102(e), because appellants have not convinced us of error in the examiner's reasoning, it is our view that the rejection would have been stronger had it been made under 35 U.S.C. § 103 since, while not explicitly shown by Sloane, it would have been obvious for the consumer to interact with the retailer computer/controller via a GUI regarding the available manufacturers incentives. In any event, it would have been obvious to store the incentives "including graphical image data" since, as admitted by appellants, it is "traditional" to present data using a GUI.

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With regard to the rejections under 35 U.S.C. § 103, we will not sustain these rejections because each of the independent claims 24, 36, 48 and 49 includes limitations similar to those in claims 28 and 40, i.e., transactions involving multiple separate entities, wherein there is transmission from a consumer to a retailer website, transmission from the retailer website to a remote website, and transmission from the remote website to the retailer website, of a list of manufacturer incentives. Finally, the retailer website transmits to the consumer a list of these incentives. As explained supra, Sloane is devoid of any such teaching. Moreover, neither Hoffman nor Smolen provides for this deficiency of Sloane. Accordingly, the examiner has not made out a prima facie case of obviousness with regard to the subject matter of claims 24-27, 29-31, 36-39, 41-43, 48 and 49 and we will not sustain the rejection of these claims under 35 U.S.C. § 103.

#### CONCLUSION

We have sustained the rejection of claims 34 and 46 under 35 U.S.C. § 102(e) but we have not sustained the rejection of claims 28 and 40 under 35 U.S.C. § 102(e) or the rejection of claims 24-27, 29-31, 36-39, 41-43, 48 and 49 under 35 U.S.C. § 103.



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